

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

JOHN SAWAYA,

Plaintiff,

CASE NO. 1:20-CV-220

v.

HON. ROBERT J. JONKER

ADDIE BRISKE, *et al.*,

Defendants

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**ORDER APPROVING AND ADOPTING**  
**REPORT AND RECOMMENDATION**

The Court has reviewed Magistrate Judge Berens's Report and Recommendation in this matter (ECF No. 38) and Plaintiff's Objections (ECF No. 40). Under the Federal Rules of Civil Procedure, where, as here, a party has objected to portions of a Report and Recommendation, “[t]he district judge . . . has a duty to reject the magistrate judge's recommendation unless, on de novo reconsideration, he or she finds it justified.” 12 WRIGHT, MILLER, & MARCUS, FEDERAL PRACTICE AND PROCEDURE, § 3070.2, at 451 (3d ed. 2014). Specifically, the Rules provide that:

The district judge must determine de novo any part of the magistrate judge's disposition that has been properly objected to. The district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions.

FED. R. CIV. P. 72(b)(3). De novo review in these circumstances requires at least a review of the evidence before the Magistrate Judge. *Hill v. Duriron Co.*, 656 F.2d 1208, 1215 (6th Cir. 1981). The Court has reviewed de novo the claims and evidence presented to the Magistrate Judge; the Report and Recommendation itself; and Plaintiff's Objections. The Court finds the Magistrate Judge's Report and Recommendation, which recommends granting the motion for summary

judgment based on lack of exhaustion filed by Defendants Bellinger, Briske, and Mason (ECF No. 24), factually sound and legally correct.

The Magistrate Judge carefully and thoroughly considered the evidentiary record, the parties' arguments, and the governing law. Plaintiff's objections do not address the Report and Recommendation persuasively. Plaintiff's objections simply try to excuse the admitted deficiencies based on medication or mental health issues. But as the Magistrate Judge noted, none of this has prevented Plaintiff from filing pleadings in this case or submitting grievances to the MDOC. None of Plaintiff's objections change the fundamental analysis in this matter. Defendants Bellinger, Briske, and Mason are entitled to summary judgment in their favor based on lack of exhaustion, for the very reasons detailed in the Report and Recommendation.

**ACCORDINGLY, IT IS ORDERED:**

1. The Report and Recommendation of the Magistrate Judge (ECF No. 38) is **APPROVED AND ADOPTED** as the opinion of the Court.
2. The Motion for Summary Judgment filed by Defendants Bellinger, Briske, and Mason (ECF No. 24) is **GRANTED**.
3. Plaintiff's Motion to Appoint Counsel (ECF No. 32) is **DENIED AS MOOT**.
4. For the same reasons that the Court dismisses Plaintiff's claims, the Court discerns no good-faith basis for an appeal within the meaning of 28 U.S.C. § 1915(a)(3). See *McGore v. Wrigglesworth*, 114 F.3d 601, 611 (6th Cir. 1997) (overruled on other grounds by *Jones v. Bock*, 549 U.S. 199 (2007)).

This case is **CLOSED**.

Dated: December 17, 2020

/s/ Robert J. Jonker  
ROBERT J. JONKER  
CHIEF UNITED STATES DISTRICT JUDGE

